

### REMARKS

Claims 1-52 are presented for consideration by the Examiner. The originally filed claims have been amended in response to the remarks made in the July 11, 2005 Office Action, and every ground of rejection has been addressed. Applicant appreciates the comments made in the Office Action. Because of the detail and clarity the Examiner has exhibited in the Office Action, Applicant was able to appreciate and understand fully the reasons and grounds for the rejections.

#### I. REJECTIONS OF CLAIMS UNDER 35 U.S.C. § 112 ARE TREATED

Regarding the rejection of the claims under 35 U.S.C. § 112, second paragraph, issues were raised regarding claims 2 and 4 because in the Office's view the claims are indefinite because they do not particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Applicants have amended claims 2 and 4 and such amendments are believed to resolve the issues raised in the Office Action with respect to those claims. Accordingly, the various objections raised are believed to be overcome by the amendments made herein which are consistent with said objections.

#### II. REJECTIONS OF CLAIMS UNDER 35 U.S.C. §§ 102 AND 103 ARE TREATED

Regarding the rejection of the claims under 35 U.S.C. §§ 102 and 103, Applicants' counsel has carefully studied the reasoning for the rejections provided in the Office Action, together with

the three (3) references relied upon as well as the four (4) references cited, but not relied upon. Applicants respectfully submit in good faith that certain aspects of the invention are unanticipated, nonobvious and allowable. Further, additional claims have been incorporated into the application, which are believed to be unanticipated, nonobvious and allowable over the prior art of record.

A. Independent Claim 1 Comprises an Attachment Means that is Not Disclosed, Taught or Suggested by the Prior Art Cited by the Office Action.

Regarding independent claim 1, that claim has been amended but also includes subject matter that was present in the originally filed claim. Specifically, originally filed independent claim 1 as well as amended independent claim 1 both include an attachment means for attaching one block to another. That feature is written as a means-plus-function limitation and the Office Action appears to be supplying a much broader interpretation to that means-plus-function limitation than is supportable by 35 U.S.C. § 112, sixth paragraph. In other words, a proper determination of the pre-existing scope of that feature, which existed at the time of filing the original claim, limits independent claim 1 to an attachment means for attaching one block to another, which is supported by the corresponding structure, material, or acts described in Applicants' specification.

It should be noted that none of the remarks presented herein are intended to impose or effectuate any narrowing of the scope of the claims, rather the remarks are simply intended to remind the Patent Office of the original scope of the claims that already existed at the time of filing. The rejections made in the Office Action appear to be directed to broad claims that simply do not exist in the application as filed. Accordingly, the remarks presented herein simply reiterate the already existing scope of the claims as constituted at the time of filing. The claims as originally filed should be construed in the future, under applicable authority, in the very same manner that they would have been construed if the remarks below had never been made. Additionally, the remarks made herein are not necessary to establish patentability because the claims as originally filed have novel, distinct features, upon which patentability rests, which claims are unanticipated and nonobvious.

The nature and gist of the reiterations below, all of which are redundant and duplicative of the original specification and 35 U.S.C. § 112, sixth paragraph, is that the claims as originally filed already are of a scope that does not ensnare the prior art presented by the Office Action. Since the means-plus-function limitation in independent claim 1 need not be amended, and none of the points made herein operate to change the scope of

the original claims, this entire response is a mere reminder and does not operate as estoppel. Accordingly, this response and all remarks made herein are not made to overcome the prior art, but rather to explain why the prior art does not apply.

According to the July 11, 2005 Office Action, independent claim 1 was rejected under 35 U.S.C. § 102(b) as being anticipated by the primary reference, namely U.S. Patent No. 3,968,615 (Ivany) (hereinafter "Ivany '615"). Applicants submit that the aspects rejected under § 102(b) are not anticipated by the Ivany '615 reference. The Office Action specifically states with respect to independent claim 1 that: "Ivany discloses a one story high reinforced (21, 22) concrete building block (B) including a hollow space (C) with means (the walls 10, 11, 13) for housing insulation (the concrete) and an attachment means (18, 19) for attaching adjacent blocks." However, the attachment means referred to in Applicants' specification contains structural embodiments that are not disclosed in the Ivany '615 reference.

Applicants submit that the Ivany '615 reference does not anticipate or render obvious the invention as claimed because, at a minimum, the Ivany '615 reference does not disclose an attachment means as originally claimed by Applicants and therefore each and every limitation is not present in the Ivany '615 reference. Other aspects of the present invention, not

expressly argued herein, may also be unanticipated by the Ivany '615 reference.

According 35 U.S.C. 112, paragraph six:

An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.

Applicants' attachment means, as recited in independent claim 1, is written in means-plus-function language and invokes § 112, sixth paragraph. Under applicable authority, an analysis of § 112, sixth paragraph consists of: 1) defining the function to be performed by reference to the claim language and the specification, Rite-Hite Corp. v. Kelley Co., Inc., 819 F.2d 1120, 1123; 2 U.S.P.Q.2d 1915, 1917 (Fed Cir. 1987); 2) identifying all structure disclosed in the specification that performs that defined function, Sage Products, Inc. v. Devon Industries, Inc., 126 F.3d 1420, 1428, 44 U.S.P.Q.2d 1103, 1110 (Fed Cir. 1997); and then 3) determining whether the structure "has the same or an equivalent structure as the structure described in the specification corresponding to the claim's means." Alpex Computer Corp. v. Nintendo Co., 102 F.3d 1214, 1222; 40 U.S.P.Q.2d 1667, 1673 (Fed. Cir. 1996).

Applicant submits that when the above analysis is applied as it must be to an attachment means as originally claimed, Ivany

'615 does not anticipate the invention or render the invention obvious. According to the **first prong** of the above analysis, it is clear that the function to be performed by the attachment means is for attaching one block to another.

According to the **second prong**, all structure disclosed in the specification for performing the defined function must be identified. Accordingly, the specification of the present invention must be consulted. Applicants' specification discloses at least one embodiment corresponding to the defined function, and said embodiment(s) is not anticipated by the Ivany '615 reference. For example, one embodiment of an attachment means disclosed by Applicants includes a weld plate, which may comprise several embodiments of said weld plate, such as weld plate 5, weld plate 6, weld plate 11 and weld plate 17 illustrated best in FIGS. 2, 2A, 2B, and 9A (see also, *inter alia*, Applicants' Patent Application Publication No. 2004/0159052 at ¶¶ [0041] and [0043]), which attachment feature is not expressly or inherently disclosed, taught or suggested in the Ivany '615 reference.

The **third prong** of the above analysis is to determine the equivalence of the claimed structure. Applicants submit that the structure disclosed in the Ivany '615 reference is not the structural equivalent to the embodiments of an attachment means, e.g., various weld plate embodiments, disclosed in Applicants'

specification in support of independent claim 1 in the originally filed application of the present invention.

The Ivany '615 reference fails to disclose, teach or suggest an attachment means as claimed and described in Applicants' independent claim 1. Instead, Ivany '615 discloses a tongue and groove attachment between adjacent blocks, in which the tongue 18 of a first block fits into the groove 19 of a second block (see FIG. 4A and column 5, lines 23-42). Accordingly, Ivany '615 does not disclose, teach or suggest the combination of elements claimed in independent claim 1, and fails to render that claim obvious.

Since the Ivany '615 reference does not disclose, teach or suggest the combination of elements or their equivalent, Ivany '615 does not contain each and every element of independent claim 1, and therefore fails to anticipate that claim or render said claim obvious. Hybritech Inc. v. Monoclonal Antibodies, Inc., 231 U.S.P.Q. 81, 90 (Fed. Cir. 1986); In re Donohue, 226 U.S.P.Q. 619, 621 (Fed. Cir. 1985); Atlas Powder Co. v. E.I. du Pont de Nemours & Co., 224 U.S.P.Q. 409, 411 (Fed. Cir. 1984).

Dependant claims 2-5 depend from claim 1 or a claim depending from claim 1, and are therefore believed to be allowable for at least the reasons given in support of independent claim 1. Support for newly added dependent claim 5 is found in Applicants' disclosure at, *inter alia*, FIGS. 1-2B and

paragraphs [0041] and [0042] in Applicants' United States Patent Application Publication No. 2004/0159052.

- B. Newly Added Independent Claims 6, 28 and 47 Each Comprise Common Subject Matter of a Plurality of Weld Plates that is Not Disclosed, Taught or Suggested by the Prior Art Cited by the Office Action.

Regarding newly added independent claims 6, 28, and 47, each of those claims contains common subject matter, namely a plurality of weld plates, that is not disclosed, taught or suggested by the prior art made of record. Accordingly, the unique and different combination of elements claimed in independent claims 6, 28, and 47 are believed to be unanticipated, nonobvious and allowable in light of the disclosure, teachings and suggestions of the prior art of record, and a finding of the same is respectfully requested.

- C. Newly Added Independent Claims 46 and 50 Each Comprise Subject Matter that is Not Disclosed, Taught or Suggested by the Prior Art Cited by the Office Action.

Regarding newly added independent claims 46 and 50, each of those claims contains subject matter that is not disclosed, taught or suggested by the prior art made of record. Accordingly, the unique and different combination of elements claimed in independent claims 46 and 50 are believed to be unanticipated, nonobvious and allowable in light of the disclosure, teachings and suggestions of the prior art of record, and a finding of the same is respectfully requested.



It is noted that the term "adjacent" is known in its ordinary meaning to refer to a plurality of potential positionable relationships, including, but not limited to, two (2) items positioned in a side-by-side manner, and two (2) items facing each other, and any other positionable relationship within the ordinary meaning of "adjacent." Since the scope of some of Applicants' claims rely in part on the foregoing statement, Applicants respectfully request that the Office object on the record if the Office disagrees with said foregoing statement.

D. Support for Each of the Newly Added Claims is Found in Applicants' Disclosure and is Therefore Not New Matter.

Each of the features contained in the new claims that have been added to the application by this amendment are supported by Applicants' disclosure and are, therefore, not considered new matter. Specifically, the features in **independent claim 6** are supported in the disclosure, *inter alia*, by FIGS. 2, 5 and 6 and paragraphs [0015] and [0047] in Applicants' United States Patent Application Publication No. 2004/0159052, and are therefore not new matter.

The features added to **independent claims 28 and 47** are supported in the disclosure, *inter alia*, by FIGS. 2, 2A and 5-7 and paragraphs [0040], [0041] and [0043] in Applicants' United States Patent Application Publication No. 2004/0159052, and are therefore not new matter.

The features added to **independent claim 46** are supported in the disclosure, *inter alia*, by FIGS. 2 and 2A and paragraph [0043] in Applicants' United States Patent Application Publication No. 2004/0159052, and are therefore not new matter.

The features added to **independent claim 50** are supported in the disclosure, *inter alia*, by FIGS. 1, 2-2B and 6 and paragraphs [0043] and [0047] in Applicants' United States Patent Application Publication No. 2004/0159052, and are therefore not new matter.

The features added to dependent claims 7, 17, 18, and 39 are supported in the disclosure, *inter alia*, by FIGS. 1-2A and paragraphs [0015], [0040] and [0041] in Applicants' United States Patent Application Publication No. 2004/0159052, and are therefore not new matter.

The features added to dependent claims 8-11 and 30-33 are supported in the disclosure, *inter alia*, by FIGS. 2, 2A and 2B and paragraphs [0042] and [0043] in Applicants' United States Patent Application Publication No. 2004/0159052, and are therefore not new matter.

The features added to dependent claims 12, 21, 34 and 42 are supported in the disclosure, *inter alia*, by FIGS. 2, 2A and 9 and paragraphs [0006], [0043] and [0050] in Applicants' United States Patent Application Publication No. 2004/0159052, and are therefore not new matter.

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The features added to dependent claims 13, 14, 35, 36, 51 and 52 are supported in the disclosure, *inter alia*, by FIGS. 1, 2, 5-7 and 9 and paragraphs [0004] and [0041] in Applicants' United States Patent Application Publication No. 2004/0159052, and are therefore not new matter.

The features added to dependent claims 15, 16, 19, 37, 38 and 40 are supported in the disclosure, *inter alia*, by FIGS. 2, 2A and 2B and paragraphs [0041] and [0042] in Applicants' United States Patent Application Publication No. 2004/0159052, and are therefore not new matter.

The features added to dependent claims 20, 22, 41, and 43 are supported in the disclosure, *inter alia*, by FIGS. 1-3 and 8 and paragraphs [0041], [0042], [0044] and [0050] in Applicants' United States Patent Application Publication No. 2004/0159052, and are therefore not new matter.

The features added to dependent claims 23-27, 29, 44, 48 and 49 are supported in the disclosure, *inter alia*, by FIGS. 1, 2, 4-7 and 9 and paragraph [0015], [0041] and [0047] in Applicants' United States Patent Application Publication No. 2004/0159052, and are therefore not new matter.

Finally, the features added to dependent claim 45 are supported in the disclosure, *inter alia*, by FIGS. 1 and 2-2B and paragraphs [0014] and [0015] in Applicants' United States Patent

Application Publication No. 2004/0159052, and are therefore not new matter.

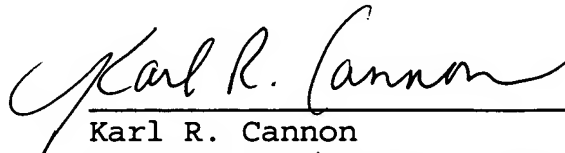
### III. CONCLUSION AND AUTHORIZATION OF DEPOSIT ACCOUNT

In view of the foregoing, Applicants believe that claims 1-52 are all allowable and the same is respectfully requested. If any impediment to the allowance of these claims remains after entry of this Amendment, and such impediment could be alleviated during a telephone interview, the Examiner is invited to initiate the same.

The Commissioner is hereby authorized to charge any additional fee or to credit any overpayment in connection with this Amendment to Deposit Account No. 50-0836.

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Respectfully submitted,



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